

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

Richard A Kozarits  
Kimberly Kozarits

Debtor.

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:  
:  
: Case No.: 19-36181  
: Chapter 13  
: Judge Deborah L. Thorne  
: \* \* \* \* \*  
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**NOTICE OF MOTION**

TO: See attached list.

PLEASE TAKE NOTICE that on January 6, 2021, at 1:30 PM, I will appear before the Honorable Judge Deborah L. Thorne, or any judge sitting in that judge's place, and present a Motion for Relief from Stay, a copy of which is attached.

**This motion will be presented and heard electronically using Zoom for Government.** No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

**To appear by video**, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

**To appear by telephone**, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

**Meeting ID and password.** The meeting ID for this hearing is 160 9362 1728 and no password required. The meeting ID and password can also be found on the judge's page on the court's web site.

**If you object to this motion** and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Fifth Third Bank, National Association

By: /s/Stephen R. Franks  
Todd J. Ruchman (6271827)  
Stephen R. Franks (0075345)  
Manley Deas Kochalski LLC  
P.O. Box 165028

Columbus OH 43216-5028  
Contact email is [tjruchman@manleydeas.com](mailto:tjruchman@manleydeas.com)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached motion upon the parties listed below, by causing same to be mailed in a properly addressed envelope, postage prepaid, on the below listed date, unless a copy was provided electronically by the Clerk of the Court.

Date 12/17/2020

/s/Stephen R. Franks

Signature

Office of U.S. Trustee, Party of Interest, (Registered address)@usdoj.gov

Marilyn O Marshall, 224 South Michigan Ste 800, Chicago, IL 60604, courtdocs@chi13.com

David H Cutler, Attorney for Richard A Kozarits and Kimberly Kozarits, Cutler & Associates, Ltd., 4131 Main St., Skokie, IL 60076, cutlerfilings@gmail.com

The below listed parties were served via regular U.S. Mail, postage prepaid, on December 17, 2020:

Richard A Kozarits and Kimberly Kozarits, 8S336 Vine Street, Burr Ridge, IL 60527

Richard A Kozarits and Kimberly Kozarits, 8S336 Vine Street, Hinsdale, IL 60521

Fifth Third Bank, Attn: Bankruptcy, 38 Fountain Square Plaza, Cincinnati, OH 45263

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: **Judge Deborah L. Thorne**  
: \* \* \* \* \*  
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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY (FIRST MORTGAGE)**

Fifth Third Bank, National Association ("Creditor"), hereby moves the Court ("Motion"), pursuant to 11 U.S.C. § 362(d) to lift the automatic stay as to real property commonly referred to as 8S336 Vine Street, Hinsdale, IL 60521 ("Property"). In support of the Motion, the Creditor states the following:

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and General Rule 2.33 of the United States District Court for the Northern District of Illinois. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion are proper under 28 U.S.C. § 1408 and 1409.
2. Richard A Kozarits and Kimberly Kozarits ("Debtors") filed a Chapter 13 case on December 25, 2019, ("Petition Date").
3. As of the Petition Date, the Creditor was the holder of a claim secured by the Property, more particularly described in the mortgage ("Mortgage"), a copy of which is attached as Exhibit "A".

4. The above described Mortgage was given to secure a promissory note, ("Note"), dated April 2, 2003 and made payable to the Creditor in the original sum of \$404,000.00. A copy of the Note is attached hereto as Exhibit "B".
5. The Creditor perfected an interest in the Property, more particularly described in the Mortgage, recorded in the DuPage County Recorder's Office on April 23, 2003. Evidence of perfection is attached as Exhibit "A".
6. As of November 25, 2020, the outstanding principal of the Note was \$273,720.23 and the outstanding interest was \$28,578.07.
7. The Debtor is in default post-petition. A payment history is attached as Exhibit "C".
8. Said failure to make post petition mortgage payments constitutes sufficient grounds for relief from the automatic stay for cause pursuant to 11 U.S.C. §362(d)(1);
9. The Property is of inconsequential value and benefit to the estate. Cause exists to lift the automatic stay under 11 U.S.C. § 362(d)(1) and/or 362(d)(2) for these reasons:
  - a. Debtor has no equity in the Property and the Property is not needed by the Debtor for its reorganization. Creditor believes that the Property has a value of \$650,000.00 based on Schedule D, which is attached hereto as Exhibit "D". Creditor believes Fifth Third Bank has an interest in the sum of \$435,963.00. Including the Creditor's lien, there are liens in an aggregate amount of \$742,632.81 on the Property. The estimated principal balance is \$273,720.23 with additional interest estimated at \$28,578.07, and fees of \$4,371.51, totaling a secured claim of approximately \$306,669.81. After the costs of sale and payment of all liens on the Property, there will be effectively no equity in this Property. Based upon the lack of equity in the Property, Creditor

asserts that the Property is burdensome and/or of inconsequential value and benefit to the estate.

- b. The Creditor is not being adequately protected. Per the Note and Mortgage, payments are applied to the last month due. Based on the foregoing, Debtor has failed to make periodic payments to Creditor since May 2020, which unpaid payments are in the aggregate amount of \$16,503.48 through November 2020. As of November 25, 2020, Debtor was to have made 11 post petition payments. Debtor has only made 4 post petition payments. Debtor is delinquent 7 post petition payments.
10. The Movant requests that the Court order that Rule 4001(a)(3) is not applicable.

WHEREFORE, the Creditor prays for the entry of the attached Order Granting Relief from the Automatic Stay and the Trustee is hereby directed to halt disbursements to Creditor upon the filing of the Order Granting Relief from the Automatic Stay. Additionally, Creditor requests the Fed.R.Bankr.P. 4001(a)(3) be waived so that the Order Terminating the Automatic Stay have immediate effect.

Respectfully submitted,

/s/Stephen R. Franks

Todd J. Ruchman (6271827)

Keith Levy (6279243)

Sarah E. Barngrover (28840-64)

Adam B. Hall (0088234)

Edward H. Cahill (0088985)

Umair M. Malik (6304888)

Stephen R. Franks (0075345)

Manley Deas Kochalski LLC

P.O. Box 165028

Columbus OH 43216-5028

614-220-5611; Fax: 614-627-8181

Attorneys for Creditor

The case attorney for this file is Todd J.  
Ruchman.  
Contact email is  
[tjruchman@manleydeas.com](mailto:tjruchman@manleydeas.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion for Relief from the Automatic Stay (First Mortgage) was served on the parties listed below via e-mail notification:

Office of U.S. Trustee, Party of Interest, (Registered address)@usdoj.gov

Marilyn O Marshall, 224 South Michigan Ste 800, Chicago, IL 60604, courtdocs@chi13.com

David H Cutler, Attorney for Richard A Kozarits and Kimberly Kozarits, Cutler & Associates, Ltd., 4131 Main St., Skokie, IL 60076, cutlerfilings@gmail.com

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